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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

COUNTY OF SAN BERNARDINO,

Plaintiff,

v.

ANDRE ROBINSON, JR.,

Defendant and Respondent;

DANIELLE WARREN,

Real Party in Interest and
Appellant.

E068346

(Super.Ct.No. CSSS1006895)

OPINION

APPEAL from the Superior Court of San Bernardino County. Michael J. Torchia,
Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Danielle Warren, in pro. per. for Real Party in Interest and Appellant.

No appearance for Defendant and Respondent.

No appearance for Plaintiff.

Real party in interest and appellant Danielle Warren (Mother) appeals from the family court's order modifying the existing custody order between her and Andre Robinson, Jr. (Father) over their child (Daughter). We affirm.

I. FACTS

Mother and Father have never been married. Daughter was born in San Bernardino, California, in 2009. In 2010, the County of San Bernardino initiated this action to collect child support from Father. Judgment was entered soon thereafter; Father and Mother were declared Daughter's parents and Father was directed to pay monthly child support.

Mother and Father agreed to share joint legal and physical custody of Daughter, and the family court adopted the agreement as an order in October 2011. Several months later, Father filed an Order to Show Cause (OSC) in which he stated that Mother had relocated to Texas with Daughter without notifying Father. The family court issued temporary orders awarding custody of Daughter to Father, and Mother and Daughter eventually returned to California. Mother and Father attempted mediation but were unable to reach an agreement.

In January 2013, the family court conducted a hearing on Father's OSC, as well as on a Request for Order (RFO) that Mother had filed for permission to relocate to Texas with Daughter. Mother indicated that she wanted to relocate to Texas for job opportunities and a better lifestyle and that Daughter would ultimately benefit from the change. In its ruling, however, the family court found that Father would be more likely than Mother to ensure Daughter maintained a relationship with both parents even if they

lived in different states, that Mother would likely impede Daughter's contact with Father if Mother and Daughter relocated to Texas, and that Mother was not "forthcoming" with Father about her recent travels to Texas. The family court therefore found that relocating to Texas would not be in Daughter's best interest and accordingly ordered that Daughter remain in California with Father if Mother relocated to Texas. Mother did not relocate to Texas after the ruling.

In 2016, Mother sought another RFO modifying the parties' custodial arrangement, asserting that Father had failed to adhere to the existing arrangement and was not communicating with Mother and Daughter. At the time, Father had physical custody of Daughter on the first, second, third, and fourth weekends of every month and shared holidays equally with Mother; Mother had physical custody of Daughter at all other times. The RFO did not contain a request to relocate. After the RFO was filed, however, the family court learned that Mother had already relocated to Las Vegas, Nevada, with Daughter. The family court reaffirmed the existing custodial arrangement and directed Mother to provide transportation for Father's custodial time with Daughter until the RFO hearing.

Father and Mother again attempted mediation but were unsuccessful. The Child Custody Recommending Counselor (CCRC) recommended to the family court that Daughter reside with Father during the week and travel to Mother in Las Vegas on the weekends. The CCRC opined that, after relocating to Las Vegas, Mother was not consistent in communicating or cooperating with Father, which caused him to miss custodial time, and that Mother had violated court orders by relocating without obtaining

Father's consent or a court order. The CCRC stated there were no health or safety concerns in Father's home and that Father and Daughter had a "positive, well-established relationship."

In April 2017, after the RFO hearing, the family court reiterated its belief that "Father would be the parent who would follow court orders and ensure [Daughter] has regular and meaningful contact with Mother." The family court also stated its belief that, based on her past conduct, Mother would not bring Daughter to California every weekend to visit Father if Daughter were to reside in Las Vegas. The family court also cited the CCRC's finding that neither parent's homes had health or safety issues and that "there is no evidence that Father's home would not be a positive environment for [Daughter's] growth and development." Accordingly, the trial court concluded that awarding Father physical custody of Daughter would further her best interests. The trial court ordered that when the next school year began, if Mother relocated back to California, Father and Mother would share physical custody of Daughter on a "week to week" basis (with Daughter attending school in the district where Father resides); if Mother remained in Las Vegas, however: (1) Daughter would attend school in California; (2) Father's home would be Daughter's home for school purposes; and (3) Mother would have physical custody of Daughter on the first, second, fourth, and fifth weekends of each month, with Mother providing all transportation for such visits. Mother timely appealed.

II. DISCUSSION

A. *Applicable Law*

“The standard of appellate review of custody and visitation orders is the deferential abuse of discretion test. [Citation.] The precise measure is whether the trial court could have reasonably concluded that the order in question advanced the ‘best interest’ of the child.” (*In re Marriage of Burgess* (1996) 13 Cal.4th 25, 32 (*Burgess*).) In making such a determination, a trial court “must look to *all the circumstances* bearing on the best interest of the minor child.” (*Id.* at pp. 31-32, original italics.)

However, “[o]nce it has been established [under a judicial custody decision] that a particular custodial arrangement is in the best interests of the child, the court need not reexamine that question. Instead, it should preserve the established mode of custody unless some significant change in circumstances indicates that a different arrangement would be in the child’s best interest.” (*Burgess, supra*, 13 Cal.4th at p. 38.)

When only one parent has physical custody over a child and that parent seeks to relocate, the noncustodial parent must meet the “significant change in circumstances” test, and a change of custody will be justified “only if, as a result of relocation with [the custodial] parent, the child will suffer detriment rendering it “essential or expedient for the welfare of the child that there be a change.”” (*Burgess, supra*, 13 Cal.4th at p. 38.) This is in part because “the paramount need for continuity and stability in custody arrangements—and the harm that may result from disruption of established patterns of care and emotional bonds with the primary caretaker—weigh heavily in favor of maintaining ongoing custody arrangements.” (*Id.* at pp. 32-33.)

On the other hand, when parents share joint physical custody and one parent seeks to relocate, “[t]he trial court must determine de novo what arrangement for primary custody is in the best interest of the minor child[.]” (*Burgess, supra*, 13 Cal.4th at p. 40, fn. 12.) “[W]hether physical custody is truly joint or whether one parent has sole physical custody with visitation rights accorded the other parent” depends on the “existing de facto arrangement” between the parents. (*In re Marriage of Biallas* (1998) 65 Cal.App.4th 755, 759-760.)

B. *Analysis*

The family court determined that awarding Father physical custody of Daughter if Mother relocated to Las Vegas¹ would further Daughter’s best interests. Mother does not dispute that the family court applied the correct standard; rather, her main contention on appeal is that the family court did not consider her undisputed evidence and ignored the fact that Father provided false testimony.

We discern no abuse of discretion here. The family court considered the effect a potential relocation would have on Daughter’s welfare, including the extent to which Daughter’s contact with Father would be impaired. (See *Burgess, supra*, 13 Cal.4th at p. 36.) In this regard, the family court stated that “based on Mother’s past conduct,” it did

¹ Because Mother indicated in September 2017 that she resided in Las Vegas, we review the family court’s conditional order under the presumption that Mother did relocate there. It would not matter to our analysis if Mother subsequently relocated back to California because the family court’s order looks to where Mother resided “[o]nce school resume[d] in California.” Even if she never relocated, however, we would affirm the family court’s ruling because, as discussed below, Mother fails to identify any error in the record submitted.

not believe Mother would bring Daughter to California every weekend to visit Father if Daughter were to relocate to Las Vegas. This was not an unreasonable conclusion for the family court to reach, as Mother previously relocated to Texas without informing Father. Although the family court did not explicitly indicate that it considered “the paramount need for continuity and stability in custody arrangements” (*Burgess, supra*, 13 Cal.4th at p. 32), the omission of such a statement “does not constitute error and does not indicate that the court failed to properly discharge its duties.” (*In re Marriage of LaMusga* (2004) 32 Cal.4th 1072, 1093.) Overall, we are satisfied that the family court adequately took “all the circumstances bearing on” Daughter’s best interests into account. (*Burgess, supra*, 13 Cal.4th at p. 31, italics omitted.)

Mother failed to support her evidentiary claims with an adequate record. Specifically, Mother did not include a reporter’s transcript of the 2017 RFO hearing in the record; accordingly, there is nothing to indicate what evidence Mother presented there and the family court’s response to it. “It is the appellant’s affirmative duty to show error by an adequate record.” (*Osgood v. Landon* (2005) 127 Cal.App.4th 425, 435.) “‘A necessary corollary to this rule [is] that a record is inadequate, and appellant defaults, if the appellant predicates error only on the part of the record [s]he provides the trial court, but ignores or does not present to the appellate court portions of the proceedings below which may provide grounds upon which the decision of the trial court could be affirmed.’” (*Ibid.*) Several of Mother’s arguments fail because they are simply unsupported by the record. There is no indication, for instance, that Mother established—and that the family court ignored—her compliance with court orders and

Father's noncompliance with the same; that Father's home was not safe for Daughter; that it was not safe for Daughter to be around Father; or that Father will treat Daughter differently either because of "bad feelings" he or his family has toward Mother or because he now knows he is not the biological father.

Mother makes one evidentiary contention that is adequately based on the record, but it does not demonstrate error. Mother argues that the family court erred by basing its decision on the fact that Mother did not give Father notice of her relocation, contending that she did provide such notice. Mother points to screenshots of text conversations between her and Father, submitted to the family court, that suggest Father had prior notice of her decision to relocate. The screenshots, however, do not establish that the family court's decision was based on Father's alleged "lie." The family court noted that it was "quite troubled" by Mother's actions and her "seeming disregard" for Father's parental rights. As the family court stated, Mother "apparently made a unilateral decision to relocate and failed to provide Father with information as to [Daughter's] whereabouts for several weeks." The mere fact that Father may have had prior notice of the decision does not contradict this: Even though Mother may have notified Father of her intent to relocate, Father repeatedly took issue with it, indicating that the decision was unilateral, and Father may nevertheless have been unaware of Daughter's precise or actual whereabouts for an extended period after Mother actually did relocate.

Mother contends in passing that the family court judge has a "bias" against "single black mothers." This conclusory statement, without more, is inadequate to support a claim of bias. (*Atchley v. City of Fresno* (1984) 151 Cal.App.3d 635, 647 [point asserted

“without any argument . . . is deemed to be without foundation and requires no discussion by the reviewing court”].)

III. DISPOSITION

The family court’s order is affirmed. The parties are to bear their own costs on appeal.²

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RAPHAEL

J.

We concur:

MILLER

Acting P. J.

SLOUGH

J.

² Although the prevailing party is typically entitled to costs on appeal (see California Rules of Court, rule 8.278(a)(1)), Father prevailed here despite not filing a brief. We decline to award costs to Father in such a circumstance.